

## **REMARKS/ARGUMENTS**

### **A. Summary of the Amendment**

Reexamination and reconsideration are courteously requested. By way of the present amendment, claims 1, 8 to 9, 13, 16, and 66 are amended. Further, claims 68 to 70 are canceled. Thus, claims 1, 5, 7 to 9, 11, 13, 16, 20 to 21, 61, 63, and 6 to 67 remain pending for the Examiner's consideration, with claims 1, 9, and 16 being independent claims.

### **B. Rejections Under 35 U.S.C. § 103(a)**

All of the pending claims are rejected as being unpatentable over WO99/23998 (Banowski) in view of U.S. Patent No. 5,968,489 (Swaile). These rejections are respectfully traversed for the following reasons.

As amended, each of the independent claims recites a product for underarm application having a two-composition product inside a container. The two compositions are distinct with respect to one another, with one composition supporting the other. Each composition includes an antiperspirant salt suspended in an anhydrous, hydrophobic vehicle including one or both of a volatile silicone and a wax having a melting temperature of at least 70 degrees C.

The cited prior art discloses a two-phase deodorant stick (Banowski), including well known soap gel carriers that have 20 to 90% by weight monohydric or polyhydric alcohols (col. 4, lines 18 to 22). This is in contrast to the currently amended claims, which recite the two-phase antiperspirant sticks having anhydrous hydrophobic vehicles. However, the Examiner cites Swaile, and Swaile indeed discloses one-phase antiperspirant compositions that include anhydrous hydrophobic vehicles such as volatile silicones with antiperspirant actives. So, the question is whether it is a matter of mere obvious substitution to make the two-phase stick of Banowski, but using the anhydrous hydrophobic vehicle compositions of Swaile instead of the soap gel carriers disclosed by Banowski.

According to the Supreme Court decision in *KSR International Co. v. Teleflex Inc.* 82 USPQ 2d 1385 (2007) and the examination guidelines for determining obviousness under 35 U.S.C. 103(a) incorporated into the MPEP (Rev. 6, September 2007), a prima facie obviousness rejection is proper under 35 U.S.C. 103(a) if the Examiner determines that an invention is predicated on simple substitution of one known element for another to obtain predictable results. However, such a rejection may be rebutted by showing that one of ordinary skill in the art could not have substituted the known elements by known methods (e.g., due to technological difficulties).

As described below, the difficulties in preparing a two-portion composition using the compositions set forth in the independent claims by following the methodology disclosed by Banowski establishes that the compositions recited in our claim 1 would not be feasible alternatives to the compositions disclosed in Banowski.

Banowski at col. 4, line 60 to col. 5, line 13 describes the two alternative methods for preparing a two-portion antiperspirant composition. According to the first method, a core is produced by pouring hot liquid gel into a mold and allowing it to cool and gel. The core is then placed inside a wider mold, and then a second hot liquid gel is poured into the space inside the mold that surrounds the core. The second hot liquid gel is then cooled to form a shell that surrounds the core. According to the second method, the shell portion is prepared first by casting the liquefied gel in an annular mold with a removable cylindrical core piece. After the shell cools and forms a gel, the core piece is removed. A second hot liquid gel is then poured into the cylindrical cavity of the shell, and is thereafter allowed to cool and gel.

Compositions such as those recited in the pending independent claims, including an antiperspirant salt suspended in an anhydrous, hydrophobic vehicle including one or both of a volatile silicone and a wax having a melting temperature of at least 70 degrees C, are sticky and tend to adhere to any type of coring device. Further, it is very difficult to form shell or core phases that are capable of maintaining their shape without lateral support. Consequently, it would be impractical if not impossible to prepare two-portion compositions using methods that required the shell and/or core portions to stand alone and maintain their shapes subsequent to, and during, the process of contacting another hot liquid that is poured adjacent to their inner or

outer surfaces. Furthermore, although this possibility is not discussed in Banowski, the use of inserts or the like to temporarily hold an anhydrous, hydrophobic antiperspirant composition in place is not a workable method because such compositions have surfaces that are very tacky and likely to bond to insert surfaces, making separation of the core and shell compositions from the inserts problematic.

To form a two-portion anhydrous, hydrophobic antiperspirant composition, the present inventors had to develop an inventive method that is tailored toward overcoming the above-discussed difficulties associated with the formulations claimed in the present claim 1. The inventive method was conceived with the present compositions as a focal point. On the same day the present inventors filed the present application in the US, the same inventors filed a counterpart patent application directed to the method that makes manufacture of such an antiperspirant composition possible. This patent application later was issued as U.S. Patent No. 6,838,032. The present application references the counterpart application in par. 0072 of the specification, as evidenced by the reference to the two applications' identical filing dates.

The method described in the U.S. patent involves a complex apparatus that includes inner and outer nozzle assemblies that dynamically pour hot liquid gel and cool the gel. Particularly, each nozzle includes cooling channels that control the temperature of the nozzle, and thereby control the temperature of the surrounding gel. The walls that form the nozzle assemblies effectively function as inserts that position the adjacent gels while they are cooling, and are never separated from the cooled gels until a second hot gel is simultaneously added to the adjacent space that would otherwise be created when the inserts are removed. The intricate nozzle assemblies also include scraping mechanisms that effectively remove any gel that sticks to the inserts to thereby leave the gel in its originally-formed space.

It is understood that the present application is directed to a composition and not to a method. The method described in U.S. Pat. No. 6,838,032 is here mentioned only to point out that an inventive and complex apparatus was needed to make the composition recited in the present independent claims. Given the complexities and the inventive methods required to make the composition as presently claimed, it is evident that such compositions are not ready alternatives to those described in Banowski, and it would not be a matter of mere substitution to

make the composition set forth in the pending independent claims in view of Banowski alone or together with Swaile. For at least this reason, the rejections under 35 U.S.C. 103(a) should be withdrawn.

#### H. Conclusion

In view of Applicant's amendments and remarks, it is respectfully submitted that Examiner's objections and rejections have been overcome. Accordingly, Applicants respectfully submit that the application is now in condition for allowance, and such allowance is therefore earnestly requested. Should the Examiner have any questions or wish to further discuss this application, Applicants request that the Examiner contact the Applicants attorneys at the below-listed telephone number.

If for some reason Applicants have not requested a sufficient extension and/or have not paid a sufficient fee for this response and/or for the extension necessary to prevent abandonment on this application, please consider this as a request for an extension for the required time period and/or authorization to charge Deposit Account No. 50-2091 for any fee which may be due.

Respectfully submitted,

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